



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0938]

RIN 1625-AA87

Security Zone, Potomac and Anacostia Rivers; Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary security zone encompassing certain waters of the Potomac River and Anacostia River. This action is necessary to safeguard persons and property, and prevent terrorist acts or incidents. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore. This action is intended to temporarily restrict vessel traffic in portions of the Potomac and Anacostia Rivers during the event.

DATES: This rule is effective from January 15, 2013 until January 24, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0938]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Ronald L. Houck, at Sector Baltimore Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, e-mail [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Regulatory History and Information

On October 24, 2012, we published a notice of proposed

rulemaking (NPRM) entitled "Security Zone, Potomac and Anacostia Rivers; Washington, DC" in the Federal Register (77 FR 64943). After the NPRM was published in the Federal Register, however, the Coast Guard determined that the boundary of the proposed security zone on the south between the Virginia shoreline and the District of Columbia shoreline along latitude 38°51'00"N needed to be relocated farther downstream to and along latitude 38°50'00"N. On November 28, 2012, we published a supplemental notice of proposed rulemaking (SNPRM) entitled "Security Zone, Potomac and Anacostia Rivers; Washington, DC" in the Federal Register (77 FR 70964). We received one comment on the proposed rules. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event and its associated activities, and enhancing public and maritime safety.

#### B. Basis and Purpose

On January 20, 2013, the U.S. Presidential Inauguration swearing-in ceremony will take place at the U.S. Capitol in

Washington, DC. Activities associated with the Presidential Inauguration include several Inaugural ceremonies, balls, parades and receptions in the District of Columbia, which are scheduled to occur from January 15, 2013 through January 24, 2013. During these activities, gatherings of high-ranking United States officials and the public-at-large are expected to take place. These activities are located along navigable waterways within the Captain of the Port Baltimore's Area of Responsibility. The Coast Guard has given each Coast Guard Captain of the Port the ability to implement comprehensive port security regimes designed to safeguard human life, vessels, and waterfront facilities while still sustaining the flow of commerce.

The Captain of the Port Baltimore is establishing a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against the large gatherings of high-ranking United States officials, the public-at-large, and surrounding waterfront areas and communities would have. The security zone is necessary to safeguard life and property on the navigable waters before, during, and after activities associated with the Presidential Inauguration and will help the Coast Guard prevent vessels or persons from bypassing the security measures established on shore for the events and engaging in waterborne terrorist actions during the highly-publicized events.

### C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received one comment in response to the NPRM. No public meeting was requested and none was held. What follows is a review of, and the Coast Guard's response to, the issue that was presented by the commenter concerning the proposed regulations.

The commenter, Mr. David A. Bell, a resident of Hamburg, NY, stated his support for the Coast Guard's proposed temporary security zone.

The security zone is tailored to impose a minimum adverse affect on port operations and waterway users located within certain waters of the Potomac River and Anacostia River at Washington, DC during the event and its associated activities.

### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

#### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order

13563. The Office of Management and Budget has not reviewed it under those Orders. There is no vessel traffic associated with recreational boating and commercial fishing expected during the effective period, and vessels may seek permission from the Captain of the Port Baltimore to enter and transit the zone.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or transit through or within the security zone during the enforcement period. Although the security zone will apply to the entire width of the Potomac and Anacostia Rivers, traffic may be allowed to pass through the zone with the permission of the Captain of the Port Baltimore. Before the effective period, maritime advisories will be widely available to the maritime community. Additionally, given the

time of year this event is scheduled, the vessel traffic is expected to be minimal.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

## 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

## 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.



#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

## 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary security zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and

recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0938 to read as follows:

§ 165.T05-0938 Security Zone, Potomac and Anacostia Rivers; Washington, DC.

(a) Location. The following area is a security zone:

(1) All waters of the Potomac River, from shoreline to shoreline, bounded on the north by the Francis Scott Key (U.S. Route 29) Bridge at mile 113.0, downstream to and bounded on the south between the Virginia shoreline and the District of Columbia shoreline along latitude 38°50'00"N, including the waters of the Georgetown Channel Tidal Basin; and

(2) All waters of the Anacostia River, from shoreline to shoreline, bounded on the north by the 11th Street (I-295) Bridge at mile 2.1, downstream to and bounded on the south by its confluence with the Potomac River. All coordinates refer to datum NAD 1983.

(b) Regulations. The general security zone regulations found in 33 CFR 165.33 apply to the security zone created by this temporary section, § 165.T05-0938.

(1) All persons are required to comply with the general regulations governing security zones found in 33 CFR 165.33.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the security zone is implemented do not have to depart the security zone. All vessels underway within this security zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. Permission may be requested prior to activation of the zone. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must

comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(c) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) Definitions. As used in this section:

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the security zone described in paragraph (a) of this section.

(e) Effective period. This section will be enforced from 8 a.m. on January 15, 2013 through 10 p.m. on January 24, 2013.

Dated: January 10, 2013.

Kevin C. Kiefer  
Captain, U.S. Coast Guard  
Captain of the Port Baltimore.

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